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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :
: 99 Cr. 997 (JFK)
: MEMORANDUM OPINION & ORDER
-against- :
: 93493
MARTIN ARMSTRONG, :
: Defendant.
-----X
JOHN F. KEENAN, United States District Judge

Defendant, Martin Armstrong ("Armstrong") has moved for discovery and a bill of particulars. The Government objects.

As a procedural matter, the motion is barred by Local Criminal Rule 16.1. United States v. Ahmad, 992 F. Supp. 682, 684-85 (S.D.N.Y. 1998) (denying similar motion for failure to comply with 16.1). Rule 16.1 states that "no motion addressed to a bill of particulars . . . or to discovery shall be heard unless" the movant files a simultaneous affidavit certifying that counsel "has conferred with [opposing counsel] in an effort in good faith to resolve by agreement the issues raised by the motion . . ." Counsel for Armstrong filed an affidavit in connection with this motion, but the affidavit contains no mention of any good faith effort to confer with the Government.

In the absence of this procedural bar, the motion would be denied on its merits. As to the bill of particulars request, defense counsel's reliance upon United States v. Bortnovsky, 820 F.2d 572, 574 (2d Cir. 1987) is misplaced. There, the Second Circuit found the rare case in which a bill of particulars was

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necessary. The case at bar is not such a case. The Indictment is 51 pages long and sufficiently informs Armstrong of the nature of the charges against him. See United States v. Torres, 901 F.2d 205, 234 (2d Cir. 1990).

There has been more than adequate discovery in this case. Discovery has taken place over the course of six years, in which the government has produced hundreds of boxes of documents. This is more discovery than is obtained under the vast majority of cases under Rule 26 of the Federal Rules of Civil Procedure.

The Court fully expects that the Government will not adhere to the formal language of 18 U.S.C. § 3500, and will supply prior statements of witnesses sufficiently before they testify to allow adequate preparation for cross examination. Further, as stated by the Court at the July 18, 2006 conference, any Brady material in possession of the government shall be supplied to the defense by August 31, 2006.

Defendant's Motion for Discovery and a Bill of Particulars is denied.

SO ORDERED.

Dated: New York, New York
August 7, 2006



JOHN F. KEENAN
United States District Judge